

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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Federal Communications Commission
Office of Secretary

In the Matter of)
)
Amendment of Section 73.202(b),) MM Docket No. 92-291
Table of Allotments,) RM-8133
FM Broadcast Stations)
(Cambridge and St. Michaels, Maryland))

To: The Commission

**REPLY TO OPPOSITION TO
MOTION TO COMPEL**

MTS Broadcasting, L.C. ("MTS"), licensee of radio station WCEM-FM, Cambridge, Maryland, and the proponent of a counterproposal in MB Docket No. 04-20, *Report and Order*, DA 05-3101 (AD December 2, 2005), acting pursuant to Section 1.45(c) of the Commission's rules, hereby replies to the Opposition to Motion to Compel (the "Opposition") filed by CWA Broadcasting, Inc. ("CWA") to MTS's Motion to Compel (the "Motion") to require CWA to abide by the Commission's order in its *Memorandum Opinion and Order* (the "*Order*") in the above-referenced docket, 12 FCC Rcd 3504 (1997), to "submit to the Commission a minor change application for construction permit specifying" operation of WINX-FM ("WINX" or the "Station") at Channel 232A in St. Michaels, Maryland. CWA's Opposition fails to cite any authority or other basis to warrant the denial of MTS's Motion. In support of this conclusion, the following is stated:

1. CWA's Opposition does not dispute that the *Order* required CWA to file a construction permit application within 90 days of the effective date of the *Order* that would specify St. Michaels, Maryland as the community of license for WINX. Nor does CWA's

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Opposition contend that the Commission stayed the effectiveness of that directive. Instead, CWA claims that it filed a Petition for Clarification with the Commission to try to reverse the *Order*, that the Commission eventually “directed” CWA to file a rulemaking petition to restore the allocation of Channel 232A back to Cambridge, and that the foregoing assessment should excuse CWA from filing the St. Michaels construction permit application required by the *Order*. Opposition at 2.

2. CWA’s explanation is not entirely accurate and, in any event, does not justify CWA’s failure to file the St. Michaels construction permit application.

3. To begin with, neither the full Commission nor the Media Bureau (the “Bureau”) has ever “directed” CWA to file a rulemaking petition to restore Channel 232A to Cambridge. The Bureau merely advised CWA that the filing of rulemaking petition was “the appropriate procedure” to use if CWA wanted to restore Channel 232A to Cambridge, because the Commission decision changing the Table of Allotments (to allocate Channel 232A to St. Michaels) had already become final. *Cambridge and St. Michaels, Maryland*, 17 FCC Rcd 20425, 20426 (MB 2002). Nowhere did the Bureau say that CWA had been relieved of its obligation to file the construction permit application to modify WINX’s facilities to specify St. Michaels as the Station’s community of license. Indeed, the Bureau pointed out that CWA’s Petition for Clarification “did not request reconsideration of the Commission action or provide any basis to revisit that decision.” *Id.*

4. Contrary to CWA’s Opposition, the pendency of CWA’s reconsideration petition in MM Docket No. 04-20 does not justify CWA’s continued failure to file the St. Michaels construction permit application. As a legal matter, CWA’s Opposition does not and cannot cite any legal authority for the proposition that the filing of a reconsideration petition in a separate proceeding (MM Docket No. 04-20) stays or changes the status of a final decision in the earlier

proceeding. CWA's opposition to the filing of the St. Michaels construction permit application is especially hollow in light of CWA's failure to argue that the filing of the St. Michaels *construction permit application – or even the modification of the Station's facilities to specify St. Michaels as the community of license – will cause CWA irreparable harm.* The absence of that argument is not surprising because CWA apparently intends to use the same transmitter site to serve Cambridge or St. Michaels.

5. There is a practical cost as well to CWA's position. Allowing CWA to ignore the *Order* will needlessly defer the time when St. Michaels will be the recipient of service from WINX as the community of license. It will probably take several months for the St. Michaels construction permit application to be processed, and CWA will then have three years to complete construction. If it is allowed to defer the filing of that application until the Bureau's decision in MM Docket No. 04-20 becomes final, CWA will, in effect, be able to postpone the provision of its primary service obligation to St. Michaels.

5. In sum, then, requiring CWA to file the St. Michaels construction permit application will not only protect the integrity of the Commission's *Order* but also accelerate the time when that *Order* can be implemented.

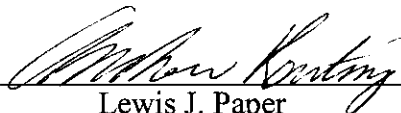
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WHEREFORE, in view of the foregoing and the entire record herein, it is respectfully requested that the Commission compel CWA to file a construction permit application to implement the St. Michaels proposal adopted by the Commission in the above-referenced docket.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 20th day of March, 2006 a copy of the foregoing "Motion to Compel" was hand-delivered or sent by first-class mail, postage prepaid, to the following:

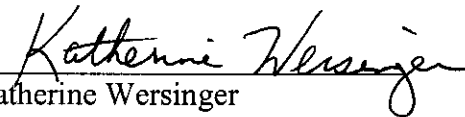
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